

Attorney Docket No.: J6886(C)
Serial No.: 10/828,906
Filed: April 21, 2004
Confirmation No.: 5655

REMARKS

The present amendment is submitted in an earnest effort to advance the case to issue without delay.

Claim 1 has been amended by incorporating the aspects of claims 7 and 8. The latter claims have been canceled. New claim 11 finds support in the specification at page 11, paragraph [00017]. New claim 12 finds support at page 3, paragraph [0006].

Claims 1-2, 4-8 and 10 were rejected under 35 U.S.C. § 103(a) as unpatentable over Rodrigues et al. (U.S. Patent Application Publication 2002/0100122 A1) in view of Nakatsu et al. (U.S. Patent 5,965,518). Applicant traverses this rejection.

Personal care products often can be rather sensitive to degradation. Heat or extended storage can cause unsightly color changes. Key culprits are ingredients with one or more double bonds in their structure. Of particular susceptibility to photo and/or oxidative degradation are materials that have two olefinic double bonds in a conjugated relationship. This breeds color bodies.

Applicant has surprisingly found that certain types of substituted urea compounds, especially those with hydroxyalkyl groups inhibit the formation of unsightly color.

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The Examiner has presented a rejection wherein the invention starts from the solution rather than the problem. Applicant's problem was the color bodies generated by unsaturated materials. The solution was found to be certain substituted ureas.

By contrast, the Examiner presents a scenario of a skilled chemist in possession of formulas with substituted ureas seeking to find further compatible formulation ingredients. This places the present invention's solution in the position of being a problem. Thus, a combination of Rodrigues et al. (which is applicant's solution) in view of Nakatsu et al. (which is applicant's problem) is an inappropriate combination of positioning primary and secondary references.

Even if the relative primary and secondary reference arrangement were appropriate, the combination still would not render the present invention obvious. Rodrigues et al. is cited for describing dilute fabric softener formulations. These feature hydroxyl urea compounds. Perfume is included in a number of the Examples. No disclosure is presented regarding the constituents of the perfume.

Nakatsu et al. describes fragrance compositions with antimicrobial activity. These fragrances are reported to contain 20-80% non-aromatic terpenoids. The Examiner has drawn attention to column 3, lines 37-45. Therein are listed examples of non-aromatic terpenoid compounds. There are 24 in number. Only alpha-terpinene and phellendrene from that list are conjugated double bond olefinic materials. Applicant's claims (as now amended) require the conjugated structure which is a very serious color generating body structure.

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A skilled chemist seeking to improve the Rodrigues et al. fabric softening formulations would have a tremendous number of fragrance possibilities to choose from. More than any other factor is the scent most appropriate to hedonically please consumers. The characteristic that a fragrance has antimicrobial activity could favor its selection but there are many reported fragrance compositions in the literature with antimicrobial activity. Why would one specifically select Nakatsu et al.

Even if Nakatsu et al. were a likely target for formulating with Rodrigues et al., this does not mean that the non-aromatic terpenoids of the secondary reference would include phellendrene and alpha-terpinene. Nakatsu et al. does not attribute specific benefits antimicrobial or otherwise to materials with conjugated double bonds.

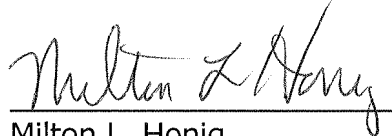
A skilled chemist in order to arrive at the same materials of the present claims would require at least a two step selection. Firstly, the Rodrigues et al. hydroxyl urea formula would have to select the Nakatsu et al. antimicrobial perfume over all other alternate antimicrobial perfumes. Thereafter, should Nakatsu et al. have been selected; the chemist would have to skillfully incorporate materials having conjugated double bonds. Yet there would be no reason for selecting those particular materials among the non-aromatic terpenoids presented in the reference. Indeed, the incorporation of highly unsaturated components would cause potential problems of discoloration to the hydroxyl urea formulas. The skilled chemist would seek to avoid the Nakatsu et al. fragrance, especially the conjugated materials. The reasonable chemist would appreciate that in solving an antimicrobial problem, he/she would be inheriting a new difficulty (i.e. color body formation). Based on these considerations, the skilled chemist

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would have no reasonable expectation of formulating a commercially successful wrinkle reducing product.

Based on the foregoing considerations, applicant requests the Examiner to reconsider the rejection and now allow the claims.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Milton L. Honig", is written over a horizontal line.

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